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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
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7 FRANK TADDEO, et al.,

8 Plaintiffs,

9 v.

10 AMERICAN INVSCO CORPORATION,
11 et al.,

12 Defendants.
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Case No. 2:08-CV-01463-KJD-RJJ

ORDER

15 Currently before the Court is Defendant Dale R. Campbell's ("CAMPBELL") Motion to
16 Dismiss (#7).¹ Plaintiffs filed a Response in Opposition (#15), to which Defendant CAMPBELL
17 filed a Reply (#24). CAMPBELL seeks that the Court dismiss Plaintiffs' claims against him
18 pursuant to Fed. R. Civ. P.12(b)(2) and (5) for lack of personal jurisdiction and insufficient service.
19 Rule 12(b) allows a party to assert a defense based on lack of personal jurisdiction or insufficient
20 service before filing a responsive pleading.

21 **I. Background**

22 The Complaint in this case was originally filed in state court on September 26, 2008.
23 Plaintiffs' filings allege that in 2005 and throughout 2006, Plaintiffs were informed of an investment
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25 ¹The Court notes that there are numerous other motions currently pending. This Order examines the case's
26 entire history, yet treats only Defendant Campbell's Motion to Dismiss (#7) here. Rulings on the remaining pending
motions are forthcoming.

1 opportunity regarding the Meridian Private Residence Condominiums (“Meridian Condominiums”)
2 which had recently been acquired by Defendant AMERICAN INVSCO CORPORATION
3 (“INVSCO”), and were being converted into luxury condominiums. Plaintiffs allege that the
4 condominiums were sold by Defendants INVSCO, through its agents and subsidiaries including
5 AMERICAN INVSCO REALTY GROUP, INC. (“REALTY”), Michael Mackenzie
6 (“MACKENZIE”) and KOVAL-FLAMINGO, LLC (“KOVAL”) during 2006 and 2007. Plaintiffs
7 allege that Defendants INVSCO, MACKENZIE and REALTY artificially inflated the prices of the
8 condominiums and induced sales by offering a “positive cash flow” lease back program. (Pet. for
9 Removal Ex. C-1 at 4.) According to Plaintiffs, the lease back program involved the Defendants
10 leasing the sold condominiums from Plaintiffs for two to three years at a fixed rate and paying for
11 Plaintiffs’ Homeowners Association (“HOA”) fees and real property taxes. Plaintiffs allege that
12 INVSCO represented to Plaintiffs and Plaintiffs’ lenders that the condominium units were for
13 residential purposes only, and not for short-term rental, hotel, or resort use. (*Id.*) Plaintiffs also
14 allege that INVSCO, KOVAL, MACKENZIE and REALTY concealed that they had received a
15 proposal in June of 2006, to rent the condominium units on an overnight basis, and at the time of
16 sale, were already engaged in leasing said units on an overnight basis. (*Id.*) Allegedly, Defendants
17 failed to disclose that the subject property lacked the proper zoning to conduct hotel-type operations.

18 At the time of signing the purchase agreement, some of the Plaintiffs signed a rental
19 agreement leasing back the purchased units to Defendant KOVAL or CONDOMINIUM RENTAL
20 SERVICES, INC. (“CRS”) who indicated that the units may have already been rented out to a third
21 party, though not indicating the type of rental. Plaintiffs allege that at the time of purchase, the HOA
22 was controlled by Defendants INVSCO, KOVAL, and CONAM and run by Defendant
23 MACKENZIE.²

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25 ²Plaintiffs additionally allege that MACKENZIE increased the HOA assessments, but in violation of Nevada
26 Statutes, failed to provide the owners with any accounting of the assessments that were paid to the HOA, or to provide
Plaintiffs with an annual financial report.

1 Plaintiffs allege that the HOA was comprised of employees or affiliates of INVSCO,
2 including Rebekah Desmet (herein “Desmet”) and MACKENZIE and operated as an alter ego of
3 INVSCO, and that members of the HOA appropriated to themselves portions of the clubhouse that
4 were supposed to be turned back to the HOA.

5 According to Plaintiffs, in September 2007, they received a letter from the HOA directors
6 informing Plaintiffs of a change in land use designations in order to fulfill Clark County
7 requirements for overnight rental activities.³ Some Plaintiffs were offered an extended lease for
8 overnight rentals with Defendant MERIDIAN PRIVATE RESIDENCES CH, LLC (herein
9 “MERIDIAN PRIVATE RESIDENCES”) at the same rental rate INVSCO and its subsidiaries were
10 obligated to pay. CRS/INVSCO contended that they could no longer afford to pay the rent agreed to
11 under the lease agreements. According to Plaintiffs, the only other alternative they were offered, was
12 to have no further rental income.

13 On January 28, 2008, Defendants MERIDIAN LUXURY SUITES HOTEL sent a letter to
14 various unit owners, offering the owners two options; the first option was to enter a lease with
15 MERIDIAN PRIVATE RESIDENCES, and the other option was to terminate the existing lease. The
16 letters indicated that CRS/INVSCO would “no longer operate the rental program related to your
17 existing lease, so you will need to select either Option A or Option B.” The letter was signed in part
18 by DALE R. CAMPBELL, as manager of the MERIDIAN LUXURY SUITES HOTEL.⁴

19 On or around February 1, 2008, many of the Plaintiffs entered into a Condominium Resort
20 Lease with MERIDIAN PRIVATE RESIDENCES. According to Plaintiffs, during the next month, a
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23 ³Plaintiffs allege that at no time when Plaintiffs entered into the leases with MERIDIAN PRIVATE
24 RESIDENCES, did anyone connected with MERIDIAN PRIVATE RESIDENCES nor CAMPBELL, nor any individual
or affiliate of INVSCO inform Plaintiffs that the rental of their units for overnight stays was illegal.

25 ⁴Plaintiffs aver that there is no entity known as the MERIDIAN LUXURY SUITES HOTEL and it appears to be
26 the name given to the resort rental program. The rental agreements attached as Exhibit 2 to Plaintiffs’ Response in
Opposition, however, notes that MERIDIAN PRIVATE RESIDENCES was doing business as the MERIDIAN
LUXURY SUITES HOTEL. (See #15 Response in Opposition Ex. 1; Ex. 2.)

1 series of letters were sent to Plaintiffs from the Board of Directors of the HOA informing unit owners
2 of a need to change the covenants, conditions, and restrictions to permit overnight rental activities.

3 In July 2008, Clark County officials found that the overnight rental program was in violation
4 of the licenses and uses granted to the Meridian Condominiums, and as a result, Meridian
5 Condominiums owed the County over \$560,000 in back room taxes. In July or August 2008,
6 MERIDIAN PRIVATE RESIDENCES, whose managing member is alleged to be CHC
7 MANAGEMENT, LLC, whose managing member is alleged to be CHC PARTNERS, LLC, who is
8 allegedly managed and owned by Defendant CAMPBELL, stopped payments under the various
9 leases entered into with some of the homeowners of the Meridian Condominiums and also stopped
10 the HOA assessment and property tax payments.⁵ As a result, the Plaintiffs who had not entered into
11 leases with MERIDIAN PRIVATE RESIDENCES and who maintained leases with either KOVAL
12 or CRS ceased to receive payments, which caused many owners of Meridian Condominiums to
13 default on their loans. Plaintiffs allege that this, and other aspects, suppressed property values.
14 Additionally, Plaintiffs allege that Defendants have caused furniture, accessories, and appliances to
15 be removed from the condominium units.

16 Plaintiffs filed an Ex-Parte Application for Temporary Restraining Order and Motion for
17 Preliminary Injunction in Clark County District Court on October 6, 2008. On October 7, the Clark
18 County District Court entered an agreed order granting, in part, Plaintiffs' Temporary Restraining
19 Order. Plaintiffs filed an Amended Complaint on October 22, 2008. The Amended Complaint was
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21 ⁵Plaintiffs allege that Defendants maintained possession, and continued renting out the premises and collecting
22 rents at that time. (Pet. for Removal Ex. C-1 at 6.)

23 Additionally, according to Exhibit T-1 a letter sent to unit owners by Defendant Mackenzie on August 1, 2008,
24 regarding then upcoming HOA board elections, indicates that MERIDIAN PRIVATE RESIDENCES was a Michigan
25 based venture capital company who stepped in when CRS was experiencing financial hardship due to construction delays
26 on the Meridian Condominium extension program. According to MACKENZIE's letter, MERIDIAN PRIVATE
RESIDENCES provided the Meridian Condominium project \$8 million in additional funding between October 2007,
through June 2008, funding owner payments and the start-up costs for the hotel operation. (Pet. for Removal Ex. C-3, T-
1). MACKENZIE stated that MERIDIAN PRIVATE RESIDENCES stepped in to provide "bridge financing money to
keep the owners whole and start up the hotel until such time as the hotel could provide sufficient income to the owners to
replace the CRS payments." (*Id.*)

1 brought as a purported class action.⁶ On October 23, 2008, Defendants removed the litigation to
2 federal court pursuant to 28 U.S.C. §§ 1332(d) and 1453(b). The Amended Complaint brings
3 eighteen causes of action alleging *inter alia* claims for negligence, fraud, misrepresentation,
4 conversion, and breach of contract. Here, Defendant CAMPBELL seeks that the Court dismiss the
5 claims against him for lack of personal jurisdiction.

6 **II. Analysis**

7 When jurisdiction is appropriately challenged, the party asserting jurisdiction bears the
8 burden of establishing its existence. See Taylor v. Portland Paramount Corp., 383 F.2d 634, 639 (9th
9 Cir. 1967). Plaintiffs' Amended Complaint states that Defendant CAMPBELL was doing business
10 in Clark County (as legal counsel or part of the law firm who was legal counsel) to INVSCO, and
11 that CAMPBELL was the managing member of MERIDIAN PRIVATE RESIDENCES, and thus
12 that he was instrumental in the promulgation of the leases at issue and the alleged operation of a
13 hotel using the units owned by Plaintiffs. CAMPBELL, in opposition, avers that the Court cannot
14 exercise personal jurisdiction over him, because he is not affiliated with INVSCO, and that his
15 affiliation with MERIDIAN PRIVATE RESIDENCES is sufficiently attenuated so as to preclude
16 personal jurisdiction, as he claims he did not operate any of the day to day activities associated with
17 Meridian Condominiums. (Mot. to Dismiss at 2.)

18 Plaintiffs aver that Defendant CAMPBELL has waived his right to contest personal
19 jurisdiction by making appearances in the state court proceedings. Additionally, Plaintiffs aver that
20 CAMPBELL has directed activities towards the forum sufficient to establish personal jurisdiction
21 when he signed the letter, as manager of the MERIDIAN LUXURY SUITES HOTEL sent to
22 Plaintiffs, indicating that CRS/INVSCO was no longer operating the rental program related to their
23 existing lease.

26 ⁶Plaintiffs filed a Motion to Certify Class (#42) that is currently pending.

1 **A. Waiver**

2 Plaintiffs aver that Defendant Campbell has waived his right to contest personal jurisdiction
 3 under Rule 12(h) by filing an appearance in state court, and by appearing in the hearing on Plaintiff's
 4 Motion for a Temporary Restraining Order. The Court does not agree. Though pursuant to Rule
 5 12(h) a defense "may be lost by failure to assert it seasonably, by formal submission in a cause, or by
 6 submission through conduct", Defendant has timely asserted his objection here. Neirbo Co. v.
 7 Bethlehem Shipbuilding Corp., 308 U.S. 165, 168 (1939). Plaintiffs cite cases from various
 8 jurisdictions wherein a party has waived person jurisdiction through conduct or by failing to timely
 9 object to jurisdiction; however, such cases are easily distinguishable from the instant matter.⁷ The
 10 purpose of the Rule, is "to expedite and simplify proceedings in the Federal Courts" C. Wright & A.
 11 Miller, 5A Federal Practice ad Procedure § 1342, at 162 (2d ed. 1990). Here, Defendant
 12 CAMPBELL has timely and effectively objected to personal jurisdiction pursuant to Rule 12(b).
 13 Defendant's objection to jurisdiction was filed six days after the case was removed to federal court,
 14 and three weeks after the state court entered an agreed upon Order on Plaintiffs' Motion for a
 15 Temporary Restraining Order and Preliminary Injunction. Though Defendant CAMPBELL
 16 participated in the state court hearing on Plaintiffs' Motion for Temporary Restraining Order and a
 17 status conference on Plaintiffs' Motion for Preliminary Injunction, the Court finds that Plaintiff's
 18 12(b) Motion was timely filed, and that Plaintiff did not waive his right to contest jurisdiction by
 19 failing to object to jurisdiction prior to the hearing on the Temporary Restraining Order.

20 **B. Personal Jurisdiction**

21 Where, there are no applicable federal statutes governing personal jurisdiction, the district
 22 court applies the laws of the state in which its sits. See Dole Food Co. v. Watts, 303 F.3d 1104, 1110
 23 (9th Cir. 2002). Nevada's long-arm statute bestows the broadest grant of personal jurisdiction
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25 ⁷Plaintiffs cite Yeldel v. Tutt, 913 F.2d 533 (8th Cir. 1990), wherein, the court found the defendant had waived
 26 jurisdiction in spite of having asserted an objection in its answer, because the defendant delayed raising the issue until
 after discovery, pre-trial motions, and a five day trial.

1 consistent with due process. See Nev. Rev. Stat. § 14.065(1). Because Nevada’s long-arm
 2 jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses
 3 under state law and federal due process are the same. See Schwarzenegger v. Fred Martin Motor
 4 Co., 374 F.3d 797, 800–01 (9th Cir. 2004); Trump v. Eighth Jud. Dist. Ct., 109 Nev. 687, 698, 857
 5 P.2d 740, 747 (1993).

6 “For a court to exercise personal jurisdiction over a nonresident defendant, that defendant
 7 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction
 8 ‘does not offend traditional notions of fair play and substantial justice.’” Schwarzenegger 374 F.3d
 9 at 801 (quoting Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The court gains personal
 10 jurisdiction over nonresidents by either (1) “general jurisdiction,” which arises where the defendant’s
 11 activities in the forum state are sufficiently “substantial” or “continuous and systematic” to justify the
 12 exercise of jurisdiction over it even if the cause of action is unrelated to those contacts, or (2) specific
 13 jurisdiction,” which arises when a defendant’s contacts with the forum state have given rise to the
 14 claim in question. See Gator.Com Corp. v. L.L. Bean, Inc., 341 F.3d 1072, 1076 (9th Cir. 2003).

15 **1. General Jurisdiction**

16 The Court begins with an analysis of whether Defendant CAMPBELL’s contacts with
 17 Nevada are sufficient to confer general jurisdiction. “The standard for establishing general
 18 jurisdiction is ‘fairly high. . . .’” Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086
 19 (9th Cir. 2000) (quoting Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th Cir. 1986)). The
 20 contacts with the forum state must be of a sort that “approximate physical presence.” Id. “Factors to
 21 be taken into consideration are whether the defendant makes sales, solicits or engages in business in
 22 the state, serves the state’s markets, designates an agent for service of process, holds a license, or is
 23 incorporated there.” Id. A court focuses upon the “economic reality” of the defendant’s activities
 24 rather than a mechanical checklist. Gates Learjet Corp. v. Jensen, 743 F.2d 1325, 1331 (9th Cir.
 25 1984). Even if substantial or continuous and systematic contacts exist, the assertion of general
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1 jurisdiction must be reasonable. See Amoco Egypt Oil Co. v. Leonis Navigation Co., Inc., 1 F.3d
2 848, 852–53 (9th Cir. 1993).

3 In applying the “substantial” or “continuous and systematic” contacts test, courts have
4 focused primarily on two areas. First, they look for some kind of deliberate “presence” in the forum
5 state, including physical facilities, bank accounts, agents, registration, or incorporation. See Perkins
6 v. Benguet Consol. Mining Co., 342 U.S. 437 (1952) (finding general jurisdiction when president of
7 a Philippines-based corporation maintained an office, kept company files, held director meetings,
8 distributed salaries, and conducted other company business in the forum state).

9 Defendant CAMPBELL avers that Plaintiffs cannot demonstrate that he has conducted or
10 participated in activities that are substantial or continuous or systematic such that he should be
11 considered present in this forum. The Court agrees. Plaintiffs have demonstrated no evidence that
12 CAMPBELL owns property in Nevada, travels to Nevada regularly, or has consented to jurisdiction
13 in Nevada under the general jurisdiction standard. However, the Court finds sufficient evidence that
14 CAMPBELL’s activities directed towards Nevada are sufficient to meet the forum’s standard for
15 specific jurisdiction.

16 **2. Specific Jurisdiction**

17 When general jurisdiction cannot be established, a district court uses a three-part test to
18 determine whether it may exercise specific jurisdiction over a nonresident defendant: (1) The
19 nonresident defendant must purposefully direct its activities at the forum state or consummate some
20 transaction within the forum state; (2) the claim must arise out of or relate to defendant’s forum
21 related activities; and (3) the exercise of jurisdiction must be reasonable, comporting with fair play
22 and substantial justice. See Schwarzenegger, 374 F.3d at 802.

23 As stated above, Defendant CAMPBELL disclaims specific jurisdiction, averring that his
24 alleged conduct did not take place in Nevada, and any alleged conduct was undertaken in a
25 representative capacity, “as the manager of the manager of a defendant limited liability company,”
26 and that requiring him to defend himself in this forum would be unreasonable. (Mot. to Dismiss at

10.) Specifically, CAMPBELL avers that his presence in this lawsuit is based upon his position as the member and manager of CHC PARTNERS, LLC, a Michigan limited liability company that is a member and manager of a second Michigan limited liability company, CHC MANAGEMENT, LLC, that is a member and manager of Defendant MERIDIAN PRIVATE RESIDENCES. (Mot. to Dismiss at 2.)

As such, CAMPBELL asserts that his contacts with the forum state are too attenuated to subject him to personal jurisdiction, and further, that he is protected by the corporate shield doctrine. Additionally, CAMPBELL avers that he is a resident of Michigan, that his office is located in Michigan, and that he has not been present in Nevada save for a preliminary meeting prior to the commencement of any operations by MERIDIAN PRIVATE RESIDENCES. Additionally, Defendant CAMPBELL disclaims Plaintiffs' assertion that he has ever been an attorney for Defendant INVSCO.

An examination of the Exhibits however, demonstrates that Defendant CAMPBELL directed a considerable amount of activity towards the forum through both the letter that was sent to all unit owners about the participation in the MERIDIAN LUXURY SUITES HOTEL in which CAMPBELL's name was listed as the "manager", and the execution of the actual lease agreements. (See Mot. to Dismiss Ex. H-9; Response in Opposition Ex. 3.) Specifically, the letter allegedly sent to all unit owners on behalf of the MERIDIAN LUXURY SUITES HOTEL, and signed in-part by CAMPBELL states that the existing lease between the unit owners and CRS did not permit participation in the MERIDIAN LUXURY SUITES HOTEL program, and solicits the unit owners to enter into a new lease agreement with MERIDIAN LUXURY SUITES. Additionally, CAMPBELL allegedly signed the Condominium Resort Lease Agreements with each unit owner as the authorized agent of MERIDIAN PRIVATE RESIDENCES, doing business as THE MERIDIAN LUXURY SUITES. (See Mot. to Dismiss Ex. H-9).

CAMPBELL attempts to differentiate his participation with the MERIDIAN PRIVATE RESIDENCES or MERIDIAN LUXURY SUITES HOTEL by averring that he never acted as the

1 “manager of the partnership” as Plaintiffs assert, and stating that he “did not personally conduct any
2 of [MERIDIAN PRIVATE RESIDENCES’s] day-to-day activities that related to the operation of the
3 resort. Defendant CAMPBELL additionally avers that he is protected from liability, and thus
4 personal jurisdiction via the corporate shield doctrine. The Court is unpersuaded by Defendant’s
5 assertions. As stated above, the evidence demonstrates that Defendant CAMPBELL directed a
6 considerable amount of activity towards the forum that had a legal and lasting significance. Though
7 CAMPBELL claims protection via the corporate shield doctrine, Plaintiffs’ Amended Complaint
8 alleges acts of fraud and personal tort liability against CAMPBELL personally, as well as in his
9 capacity as an agent for his limited liability companies. While the Court refuses at this time to
10 examine the weight of said claims, the exercise of jurisdiction over Defendant CAMPBELL is
11 certainly reasonable, and comports with the articulated standards of fair play and substantial justice.

12 **III. Conclusion**

13 Accordingly, **IT IS HEREBY ORDERED** that Defendant Dale R. Campbell’s Motion to
14 Dismiss (#7), is **DENIED**.

15 DATED this 8th day of September 2009.

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18 _____
19 Kent J. Dawson
20 United States District Judge
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